- rights to education to prepare for productive roles
- free choice of profession and employment
- equal opportunities for advancement
- equal remuneration for work of equal value
- equitable working conditions
- freedom from exploitation
- security with respect to unemployment
- entitlement to vote
- right to hold public office

Juristic opinion on these matters has been, and is now, varied and diverse. Moreover, as mentioned above, history has shown that merely conceptualizing constitutional precepts is far from sufficient. Provisions must be made for the implementation of their intent. To accomplish this women should be afforded the means to sit on legislative bodies so they may guide in formulating the guarantees.

Respect for women is a notable characteristic of Afghan society. Few Afghan women wish to destroy their respected status and, generally, they do not seek to deny the essence of Islam nor Afghan cultural ideals. Many do ask, nonetheless, for more precise definitions of what constitutes honourable behaviour consistent with modern realities. In other words, how may they engage in productive roles while simultaneously preserving accepted social values.

In the past women contributed to national development and

enhanced the image of a progressive Afghanistan. They functioned in the public arena with poise and dignity, with no loss of honour to themselves or to their families, and with much credit to the nation. They proved the correctness of modernist contentions that there is nothing inconsistent with Islam and full participation of women in the society. They look forward to contributing again; to be part of the monumental challenges of rebuilding Afghanistan.

To this end the next constitution of Afghanistan should be so designed as to facilitate these women in achieving their goal of contributing equally to the social, economic and cultural progress of the nation with the dignity guaranteed them by Islam.

CONSTITUTIONAL REQUIREMENTS FOR AFGHAN WOMEN

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This paper seeks to put forward some guidelines governing the forumulation of constitutional precepts relating to the rights of Afghan women after repatriation. While briefly examining a few major patterns indicative of the status of women in pre-exodus Afghanistan, the intent of the discussion is to highlight the need for certain changes which will be required if the framers of a new constitution genuinely seek to fulfill the Islamic injunction to ensure equality and justice for all. Few contest the rightness of the injunction, but historical realities suggest the need for innovative change.

Background

Afghanistan's rich meld of geographic and ethnic diversity reflects the range of standards set for female behaviour and male treatment of women. Rural customs differ from those practiced in small towns and cities; and within urban centres, women from elite profèssional, commercial and bureaucratic households pursue more emancipated life-styles, distinct from

women in mid-to-lower-income families, many of whom maintain strong rural links.

Probably the most significant divergencies centre around opposing attitudes concerning education and career opportunities for women.

These divergencies rise from certain customary and traditional practices common to all groups, many of which are alien to the spirit of Islam and impinge on the rights of women. Most adversely affect rights in personal laws and concerns involving bethrothal, marriage, divorce, maintenance, legacies, inheritance, property, guardianship, and minority custody. Education and working conditions form another major category.

The need for reform in such matters has been acknowledged publicly by Afghan leaders for over a hundred years. Amir Abdur Rahman (1880-1901) introduced numbers of laws in an attempt to align customary social practices with the prescriptions of Islam. Using the dictates of the Qur'an, he forbade child marriages, forced marriages and the leverite, as well as exhorbitant brideprices and marriage gifts. He upheld hereditary rights for widows and ruled that women could seek divorce. He granted rights to wives in cases of nonsupport and authorized women personally to receive the <u>mahr</u>. He denied women full freedom of expression and movement, however, by decreeing that men were entitled to full control over women. The honour of the nation, he said, rested on this.

Subsequent calls for expanded roles for women, based on education and career opportunities with the concomitant advocacy of the voluntary removal of the veil and end of seclusion (1959), met with growing displeasure from conservatives who periodically forced slow downs and cancellations of women's programmes.

Nevertheless, the concept that women should participate in development persisted as a national policy, while, at the same time, age-old beliefs and customs continued to prevail. Compilations such as the Penal Code of 1976 and Civil Law of 1977 are examples in which familiar articles outlawing child marriage, forced marriage and abandonment are found together with customary laws including provisions prejudicial to women and favourable to male dominance in matters such as divorce, child custody, adultery and the defense of honour.

Past Constitutions

These contradictions existed despite the fact that Afghanistan's constitutions consistently implied equal rights for women. The first constitution, promulgated in 1923, guaranteed equal rights to all citizens without specific reference to women, although Article 4 did state that succession would be determined "on the principle of male inheritance."

No specific mention of women was made in the 1931 Constitution and, in 1964, the Constitutional Advisory Committee decreed that the mere mention of women would in itself constitute

a form of discrimination. This decision was arrived at without arguement from the two women on the Advisory Committee and the four women who sat on the Loya Jirga which passed the Constitution, all of whom were appointed by the reigning monarch.

Women were automatically enfranchised by the 1964 Constitution which stated that all Afghans "without discrimination or preference have equal rights and obligations before the law." Among other things, this constitution guaranteed "dignity, compulsory education and freedom to work."

In 1977, the 20-member Constitutional Advisory Committee included two women and the almost 400-member Loya Jirga included four publicly elected women-members as well as eight women selected by the government. Some of the more significant changes made in the draft of this constitution were promoted by these women members. A subtle example concerned the qualifications required of those holding high offices, such as President, Vice-President and cabinet ministers. The draft stipulated that none of these officials might be married to a foreign wife. The Loya Jirga changed "wife" to "spouse," signalling that women might served in these highest positions.

Most significantly, Article 27 of the 1977 Constitution read: "The entire people of Afghanistan, women and men, without discrimination and privileges have equal rights and obligations before the law."

Despite such ringing pronouncements, the government was

unable - and unwilling - to insist on lessening patriarchal controls; the family continued to be the single most important institution in Afghan society. Family attitudes, not government guarantees, decided the future of girls. Furthermore, laws favouring women were indifferently enforced, and as more and more women entered the work force, competition caused resentment among men to surface. Criticisms of sex discrimination and tokenism were raised.

Injustices concerning such matters as the free choice of mates, divorce, property rights and maltreatment continued to occur. Few women had the knowledge or the recourse to demand their constitutional rights without sympathetic help from male family members. For many who were ignorant of their rights, it was precisely the lack of such support which placed them in need of legal assistance. Few mechanisms facilitating an approach to awesomely perceived judicial institutions were available to the ordinary woman, in spite of the opening in 1975 of a Special Court for Family Affairs in which female judges participated.

Yet, women were unwilling to take a militant stance, and they lacked the cohesive leadership necessary to permit them to function as a distinct group. No leaders came forward to capitalize on the proven extent of their power to enforce the guarantees pledged to them in the legal statutes. Instead, incipient rebellion smoldered, particularly among educated

elites who faulted the authorities for moving too slowly. In truth, stagnation had set in and changes were needed.

The Saur Revolution

Although all but a few deplored the violence which accompanied the Saur Revolution and the establishment on 27 April 1978 of the leftist Democratic Republic of Afghanistan (DRA), many women looked forward with anticipation to new programmes for women unshackled by precedent.

The DRA abrogated the 1977 Constitution and on 17 October 1978 issued Decree No. 7 with the expressed purpose of ensuring "equal rights of women with men and in the field of civil law and for removing the unjust patriarchal feudalistic relations between husband and wife for consolidation of further sincere family ties." Decree No. 7 was simplistic and inadequate and like earlier pronouncements against child marriages, forced marriages, the leverite and exorbitant brideprices, fielded for a hundred years since they were first addressed by Amir Abdur Rahman, the decree was doomed to be ineffective.

The revolutionary rhetoric continued over subsequent years, but the feminist movement in Afghanistan became inextricably enmeshed with the political fortunes of individual leaders - and with foreign invaders well-versed in directional indoctrination. The promised cataclysmic changes did not materialize. By allowing themselves to be manipulated, the militant activists

subordinated the women's movement to male domination, adding a sinister dimension to the traditional "patriarchal" attitudes their rhetoric condemned.

The Refugee Experience

Many families opted for exile after the establishment of the DRA, rather than countenance interference in the management of their family affairs. Heavier than normal restrictions were imposed on women in exile, a predictable reaction taken by most beleaguered cultures. The jihad is regarded as a struggle to maintain national ideals, including the safekeeping of values entrusted to women esteemed as the perpetuators of Afghan cultural values. Their protection is a cultural priority.

This has resulted in a resurgence of social conservatism most clearly demonstrated by the tightening of practices relating to participatory roles for women in the public sector. Greater insistence in the application of purdah and the wearing of the veil has been coupled with a reluctance to permit females to pursue education and career activites outside the home. Women in exile, therefore, are severely curtailed.

Thus, after a century of liberalizing efforts, Afghan women still struggle to be recognized as individuals entitled to equality and justice.

Post-Repatriation Prospects

Pragmatists contend that after repatriation reality will

force rapid changes among women, for pressing economic and social needs will demand women be given productive roles. But under the prevailing circumstances these moderates have yet to establish effective communication channels to the conservative decision-makers whose jihad mentality is more extreme. For the time being the majority allow the conservatives to speak for them, fearing that to do otherwise would compromise the reputations of both sexes.

Any movement of change will cause reactions. A constitution therefore should guarantee that these reactions remain within the value system of the entire social community without representing aberrations expressed by any one segment. If equity forms the basis of the essence of Islam, and women are to share in this, a body of systematic laws must be created. Such laws, nevertheless, should rest on a broad framework of Islamic principles contained in a constitution, the purpose of which would be to define the spirit and intent of Islam's guarantees for woman's entitled position. Enactments addressing specific conditions enabling women to conduct their lives according to the fundamentals proclaimed by the constitution, on the other hand, would best be left to legislative bodies so that the jurisdiction of the courts to interpret and apply the legislative laws would be derived directly from the constitution.

For a constitution to realize this goal and be fully effective, the concept of ijtihad is of paramount importance.

Islamic jurisprudence can only evolve dynamically in the light of modern experiences and changing circumstances if the intrinsic teachings of Islam are allowed to emerge from the overlay of traditional and customary conventions which have acquired the force of law through usage, in spite of the fact that in many incidences they compromise the rights of women laid down in the Qur'an and Sunnah.

As the Qur'an is addressed to men and women alike, so too should a constitution establish, through the application of ijtihad, that women are in no way lesser than men. This may be ensured through affirmative endorsement of basic principles. Examples might be:

- the preserverence of dignity
- equal standards of morality
- equal legal capacities in personal matters, commerce and business
- equal protection before the law
- equality of accountability, including rewards and punishments
- freedom of choice
- absence of forced and pre-puberty bethrothal
- a voice with regard to multiple marriage
- recognition of the special needs of child-bearers
- equal opportunities to initiate divorce
- equitable inheritance
- freedom of movement
- freedom of association

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